

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AUSTIN E. LIGHTFEATHER,

Plaintiff,

vs.

JODI NELSON, Judge, 3rd District Court, in
official capacity; PATRICK CONDON,
County Attorney, in official capacity; CAROL
WOLF, Lancaster County Jail mailroom
clerk, in official capacity; and JUSTIN
BROWNSWOTH, Officer, Lancaster County
Jail, in official capacity;

Defendants.

8:22CV303

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Austin E. Lightfeather's response, [Filing No. 6](#), to the Court's August 31, 2022 Memorandum and Order (the "Order to Show Cause") requiring Lightfeather to show cause why he is entitled to proceed in forma pauperis ("IFP") in this action. See [Filing No. 5](#). The Court has previously determined that three or more federal court cases brought by Plaintiff, while a prisoner, were dismissed as frivolous or for failure to state a claim upon which relief may be granted. See, e.g., *Lightfeather v. McSwine*, No. 8:22-cv-00238-JFB-PRSE (D. Neb.) ([Filing No. 11](#), finding Plaintiff has "three strikes" and dismissing complaint pursuant to [28 U.S.C. §1915\(g\)](#)). Previous cases brought by Plaintiff that were dismissed include: *Lightfeather v. Prey et al*, No. 8:21-cv-00211-RGK-PRSE (D. Neb.) (Filing Nos. [15](#) & [16](#), finding Plaintiff's complaint failed to state a claim for relief and dismissing case on April 8, 2022, after Plaintiff failed to amend complaint); *Lightfeather v. Green et al*, No. 8:21-cv-00208-RGK-PRSE (D. Neb.) (Filing Nos. [12](#) & [14](#), finding Plaintiff's complaint failed

to state a claim for relief and dismissing case on October 12, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. Ricketts et al*, No. 8:21-cv-00165-RGK-PRSE (D. Neb.) (Filing Nos. 12 & 14, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on October 7, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. City of Lincoln*, No. 4:20-cv-03118-RGK-PRSE (D. Neb.) (Filing Nos. 112 & 113, May 24, 2021 Memorandum and Order and Judgment dismissing Plaintiff's second amended complaint for failure to state a claim and for being frivolous); *Lightfeather v. Beatrice Sun Times, et al*, No. 8:21-cv-00114-RGK-PRSE (D. Neb.) (Filing Nos. 14 & 15, May 19, 2021 Memorandum and Order and Judgment dismissing Plaintiff's complaint as frivolous).

The Prison Litigation Reform Act ("PLRA") prevents a prisoner with "three strikes" from proceeding IFP unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). "[T]he requisite imminent danger of serious physical injury must exist at the time the complaint or the appeal is filed . . . [and] the exception focuses on the risk that the conduct complained of threatens continuing or future injury, not on whether the inmate deserves a remedy for past misconduct." *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003).

Lightfeather filed a response to the Court's Order to Show Cause on September 8, 2022. Filing No. 6. In his response, Lightfeather states he faces a "danger towards my United States Constitution life, liberty, and pursuit to happiness, [which] is at threat, which places [his] individual constitutional rights at threat, which places [him] in danger of imprisonment for a future amount of time." *Id.* at 1. This alleged danger Lightfeather faces stems from what he alleges is a "false charge" of writing a threatening letter to

Lancaster County District Court Judge Jodi Nelson, a named defendant in Lightfeather's Complaint, see [Filing No. 1](#). [Filing No. 6 at 2](#). Lightfeather further alleges that his imprisonment as a result of the false charge and his "having Autism" makes him "more prone to being subject to violence in the facility" by racist officers who discriminate against him because he is Jewish and Native American. *Id.* at 3. Lightfeather's allegations, at most, suggest only a mere possibility of harm and do not establish a threat of imminent danger as required by [§ 1915\(g\)](#). See *Gills v. Frakes*, No. 4:21CV3004, 2021 WL 1575767, at *1 (D. Neb. Apr. 22, 2021) (noting that speculation about the mere possibility of danger is insufficient for purposes of [§ 1915\(g\)](#)).

In his Complaint, Lightfeather sues Judge Nelson, Lancaster County Attorney Patrick Condon, Lancaster County Jail Mailroom Clerk Carol Wolf, and Lancaster County Jail Officer Justin Brownswoth in their official capacities for alleged due process and equal protection violations. [Filing No. 1](#). Lightfeather alleges Defendants charged him because he is Jewish with writing threatening letters to Judge Nelson, a crime which he denies, and "[t]he mail room illegally opened [his] legal mail to somehow connect [him] to another letter that [he] did not write that had threats in it." *Id.* at 3, 5, 13. Lightfeather claims "psychological injuries" and "mental health crisis" as a result of the wrongful charges. *Id.* at 5. However, none of these allegations indicate an imminent threat of harm.

In sum, the Court has considered Lightfeather's response to the Order to Show Cause and the Complaint and finds his allegations do not support a finding that Lightfeather faces an imminent danger of serious physical injury. Lightfeather, therefore, is prohibited from proceeding IFP pursuant to [28 U.S.C. § 1915\(g\)](#). Because

Lightfeather has not paid the \$402.00 filing and administrative fees and for lack of good cause shown, this matter is dismissed without prejudice.

IT IS THEREFORE ORDERED that:

1. Lightfeather's Motion for Leave to Proceed in Forma Pauperis, [Filing No. 2](#), is denied.
2. This case is dismissed without prejudice and a separate judgment will be entered in accordance with this Memorandum and Order.
3. Any notice of appeal filed by Lightfeather must be accompanied by the \$505.00 appellate filing fee because Lightfeather will not be allowed to proceed in forma pauperis on appeal.
4. The Clerk of Court is directed to send a copy of this Memorandum and Order and the accompanying Judgment to Lightfeather at the Nebraska Department of Corrections – Lincoln, P.O Box 22800, Lincoln, NE 68542-2800, and update his address in this case accordingly.¹

Dated this 31st day of October, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge

¹ Lightfeather has recently filed another case in which he indicates he has been placed at the Nebraska Department of Correctional Services' Diagnostic and Evaluation Center, though he remains a pretrial detainee in the custody of Lancaster County. See [Filing No. 1 at 3, 8](#), Case No. 8:22CV360.